

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5122 OF 2015

1. Chopda Shetkari Sahakari Sakhar
Karkhana Ltd. Chahardi,
Tq. Chopda, Dist. Jalgaon,
Through its Chairman.

2. Chopda Shetkari Sahakari Sakhar
Karkhana Ltd. Chahardi,
Tq. Chopda, Dist. Jalgaon,
Through its Managing Director

...PETITIONERS
(Ori. Opponents No.1 & 2)

versus

1. Madhukar Sahakari Sakhar
Karkhana Ltd.,
Through its Managing Director,
Jivramnagar, Nhavi Marg, Faijpur,
Tq. Yawal, Dist. Jalgaon.

.... (Ori. Disputant)

2. Hon'ble Commissioner for Sugar
Maharashtra State Sakhar Sankul,
Pune, Shivajinagar, Pune.

...RESPONDENTS
(Ori. Opponent No.3)

.....
Mr. Vijay B Patil, Advocate for Petitioners
Mr. S.P. Shah, Advocate for respondent No. 1
Mr. S.K. Tambe, A.G.P. for respondent No. 2
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 25th AUGUST, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.

2. Petition takes exception to an order dated 09-09-2014 passed by Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad - the revisional authority, in revision application No. 2 of

2014 filed by present respondent No. 1 against an order dated 07-01-2014 on Exhibit-21 in Dispute No. 808 of 2008 pending before the co-operative court, Jalgaon.

3. Relevant factual aspects involved in the matter can be narrated briefly as under :-

4. Parties are hereinafter referred to by their original status in the dispute, respondent No. 1 as disputant and petitioners No. 1 and 2 as opponents No. 1 and 2. The disputant and opponents No. 1 and 2 are the sugar factories. Among them there had been agreement executed in respect of supply of sugar cane for consideration. It appears that disputant had made certain claim in respect of unpaid amount against opponents No. 1 and 2 and, as such, dispute is pending before the co-operative court. While notice/summons had been served on opponents No. 1 and 2, although it had put in appearance, had not filed written statement and, as such, under order dated 05-11-2008 "*No Written Statement*" order came to be passed against opponents No. 1 and 2. Subsequently, opponents No. 1 and 2 moved an application Exhibit-14 for setting aside said "*No Written Statement*" order. As such, under order dated 04-06-2009, "*No Written Statement*" order dated 05-11-2008 had been set aside. Along with application Exhibit-14, opponents No. 1 and 2 had also filed written statement and had also set up counter-claim against the disputant.

5. After said order had been passed, the dispute appears to have proceeded further, albeit it appears that opponent No. 1 had not paid requisite court fees on the counter-claim and since this was realized, application Exhibit-24 came be moved on 07-03-2011 seeking permission to pay court fees on counter-claim. It appears that this application is still pending.

6. During the course of proceedings, disputant had moved application Exhibit-21 seeking exclusion of counter claim. It appears that said application had been considered under order dated 07-01-2014 by the co-operative court, Jalgaon and the counter-claim of opponent No. 1 was partly allowed excluding certain part of the counter-claim as contained in order.

7. Revision application bearing No. 2 of 2014 had been moved by original disputant against order dated 07-01-2014 passed by the Co-operative Court, raising various contentions particularly with reference to rules 6-A to 6-C of Order VIII of the Code of Civil Procedure (hereinafter referred to as " CPC ") pertaining to counter-claim. Revisional Court had set aside order dated 07-01-2014 on Exhibit-21 passed by the co-operative court in dispute No. 808 of 2008 and had directed the trial court to decide application dated 07-03-2011 at Exhibit-24 filed by opponent No. 1 and the disputant had been given further opportunity to file fresh application with reference to rule 6-C of Order VIII of the CPC. Opponent No. 1, aggrieved by said order, is before this court.

8. The facts as have been hitherto narrated above are not much in dispute and "*No Written Statement*" order had been passed on 05-11-2008, however, it was set aside under order dated 04-06-2009 subject to payment of costs, that no court fees was paid on the counter-claim set up in written statement appended along with application for setting aside "*No Written Statement*" order. It was after application Exhibit-21 for exclusion of counter-claim at the behest of disputant had been filed, application Exhibit 24 had been moved by opponent No. 1 for payment of court fees on the counter-claim.

9. Revisional court under above order appears to have considered that once event of filing written statement has been over, subsequent occasion upon a request for accepting court fees on counter-claim, hinges on discretion of the court and under the circumstances separate request for raising counter-claim would be a requirement, for matter may not be said to be a matter pursuant to rule 6-A of the CPC whereunder defendant can set up counter-claim as a matter of right.

10. Learned Judge has considered that while "*No Written Statement*" order was set aside there was no separate order of accepting counter-claim by the court and that in such a case opponent's counter - claim without its separate consideration in discretion would not stand. The trial court, as such, was considered to have erred in entertaining the application of the disputant

purporting to be pursuant to rule 6-C of Order VIII of the CPC.

11. Mr. Subodh Shah, learned counsel appearing for respondent No. 1 places heavy reliance on judgment in *Ramesh Chand Ardawatiya Vs. Anil Panjwani* reported in *AIR 2003 Supreme Court 2508 (1)*, particularly head Note "D" with reference to various aspects involved in the matter. With reference to Rules 6-A to 6-C of Order VIII of CPC, the Supreme Court appears to have considered that there are three modes by which counter-claim can be set up in the suit. Firstly, written statement filed under rule 1 of order VIII of CPC may itself contain a counter-claim and that would be in exercise of legal right conferred by rule 6-A. In other case, counter-claim may be possible by amendment to be incorporated subject to the leave of the court and thirdly counter-claim may be filed by way of subsequent pleadings under Rule 9 of the CPC. In latter two cases, it has been observed by the Supreme Court that counter-claim though referable to rule 6-A of CPC cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either under Order VI, rule 17 of the CPC if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order VIII, rule 9 of the CPC. The Supreme Court again discussed the purport underlying the same under the situation. This case was that without there being written statement, simply counter-claim was to be filed. Thus, these observations are made by the Supreme Court in relation to the facts

as those were appearing in said matter.

12. However, aforesaid consideration by revisional court appears to be little away from factual position, for, the treatment has been given to the counter-claim as having been accepted and as such, application Exhibit-21 had been moved. Under the circumstances, may not be explicitly, by implication, the parties and also the court have treated order of having accepted position that opponent No. 1 had set up counter-claim along with written statement. Had such position not been so, there was no reason for disputant to file application at Exhibit 21.

13. In the present case, there is no dispute on the factual aspects, viz; "*No Written Statement*" order had been passed by the court for want of written statement as stipulated with reference to order VIII of CPC and that order having been set aside. The position emerges that opponent No. 1 was allowed to file written statement, and Order VIII, rule 6-A of CPC enables the person to set up counter-claim along with written statement. When the court has let the defendant file written statement and when counter-claim can be and is a part of written statement pursuant to rule 6-A of CPC and when the rule does not specifically refer to any special or separate permission for doing so, and parties and the court having given a treatment to the same it being pursuant to Rule 6-A, I think under discussion appearing in the decision given by the revisional court it unnecessarily got itself entangled on maintainability of counter-

claim.

14. Even otherwise, looking at present dispute, it is unlikely to gain anything, save and except respondent No. 1 procrastinating its own proceedings.

15. For inconvenience being caused for laxity of opponent No. 1 in the matter, the same can be taken care of by enhancement of cost granted under order dated 04-06-2009 by the co-operative court.

16. Even otherwise the aspects involved, are all procedural. It is disputant's case which is being procrastinated from 2008. Looking at this situation, I think it is in nobody's interest to get turmoiled by these procedural aspects in the matter. Under the circumstances, I deem it appropriate in exercise of powers under Articles 226 and 227 to resolve whole dispute by letting it open to court for trial on merits.

17. In the circumstances, impugned order order dated 09-09-2014 passed by Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad - revisional authority, in revision application No. 2 of 2014 stands set aside. Order passed on Exhibit-21 by the trial court is not disturbed and dispute be proceeded with as expeditiously as possible preferably within a period of six months from the date of receipt of writ of this order.

18. So far as enhancement of cost is concerned, the same is valued at Rs. 10,000/-. Cost to be paid to disputant be deposited in the co-operative court within a period of four weeks from the date of receipt of writ of this order. Matter to proceed along with counter-claim except as excluded by trial court under its order on Exhibit-21.

19. Writ Petition, as such, is allowed in terms of prayer clause "B". Rule is made absolute accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
